



**TESTIMONY SUBMITTED TO THE JUDICIARY COMMITTEE OF THE
KANSAS SENATE**

**SB 34 – PENALTIES FOR VOTING CRIMES; PROSECUTION OF
ELECTION CRIMES**

JANUARY 29, 2015

Thank you, Chairman King, and members of the committee for affording this opportunity to provide testimony on SB 34. My name is Micah Kubic and I serve as the executive director of the American Civil Liberties Union of Kansas, a membership organization dedicated to protecting and strengthening the freedoms and democratic processes guaranteed to all of us by the United States Constitution.

It is precisely our reverence for the rule of law, liberty, and democracy that moves us to oppose SB 34. Although we are troubled by many of the provisions of the bill—including those which could potentially penalize and criminalize individuals who make simple mistakes when attempting to vote—we are most concerned by the prosecutorial authority that the bill would grant to a state agency that is not equipped to exercise that authority.

Most importantly, though, we oppose this bill because granting prosecutorial power to the Secretary of State's Office means declaring that neither voting nor voting crime are taken seriously. Voting is the very essence of the American experiment in democracy. For that reason, we must cherish and guard the right to vote. We cherish that right by making it easier for citizens to vote; we guard it by treating voting crimes seriously. Voting-related crimes are exceedingly, exceptionally rare—and even then are most often the result of mistakes like voting in one's old precinct after having moved to a nearby neighborhood, rather than a willful attempt to subvert an election—but if they occur, they should be taken seriously.

That means that in those very rare cases where there is credible evidence that a real voting crime has been willfully committed, it should be pursued and prosecuted by those who are most capable of doing so – county attorneys in the place where the act allegedly occurred. The public has entrusted county attorneys with the power to prosecute crimes large and small, everything from petty shoplifting to murder. That is because we have collectively realized that the pursuit of justice and prosecution of crime requires specialized skills and attributes. Moreover, effective prosecution requires sensitivity to local concerns and possession of local knowledge that county attorneys are uniquely well-positioned to provide. County attorneys have already made use of that expertise and local knowledge to prosecute voting crime, as when a Kansas City, Kansas lawyer was prosecuted for double-voting in Missouri and Kansas elections.

There is a reason that, so far as we have been able to determine, no other state in the union grants prosecuting power to a Secretary of State. It is because expertise in maintaining voting records and organizing elections does not translate into an ability to prosecute voting crimes. The Office

of the Secretary of State is a state-wide administrative agency; it is not designed to have the capacity, expertise, or local knowledge to serve as a prosecuting agency.

Attempting to transform the Secretary of State's office into a prosecuting entity when it is neither designed nor prepared to do so would mean failing to show reverence for the vote or the integrity of the democratic process. If we truly believe that the right to vote is important, then, in those very rare circumstances where a willful voting crime is committed, it should be treated as a real crime. That means that voting crimes should be pursued only by real, experienced, and trained prosecutors in the county attorneys' offices, not consigned to the margins with non-experts in other state agencies. We entrust our prosecutors with the power to pursue other crimes that we hold to be threats to our social fabric – they can surely be counted upon to prosecute intentional, willful voting crimes on the extraordinarily rare occasions when they occur.

We respectfully ask that you reject this bill.